

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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| In re the Application of (first named inventor): | Atty. Docket No.: 004770.00783<br>(Amended) |
| <b>Kevin McCarthy</b>                            |   |
| Serial No.: 09/942,761                           | Group Art Unit: 2676                        |
| Filed: August 31, 2001                           | Examiner: Tran, Tam D.                      |
| For: Handset Personalisation                     | Confirmation No.: 4282                      |

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

U.S. Patent and Trademark Office  
Customer Service Window, **Mail Stop - AF**  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Sir:

Applicants respectfully request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated in the below remarks. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

***Remarks***

Having received and reviewed the final Office Action dated February 10, 2006, and the Advisory Action dated May 12, 2006, Applicants respectfully submit that the standing rejections are based on one or more clear errors, and that the appeal process can be avoided through a pre-appeal brief review as set forth in the Official Gazette notice of July 12, 2005.

The pending rejections fail to address all the claim limitations, and exhibit clear factual and legal errors with respect to the cited references. The specific errors relied upon in this Pre-Appeal Brief Request for Review include the following:

- The Office made a clear legal and/or factual error in its analysis of the *Armanto* reference as applied to claims 1, 33, and 40 of the present application. As argued in the Request for Reconsideration dated April 11, 2006 (p. 2) and in the Amendment dated July 26, 2005 (pp. 9-12) *Armanto* does not teach “user selectable profiles” (claim 1) or “user selectable groups” (claims 33 and 40) that include “user adjustable operating characteristics” as claimed.
- The Office made a clear legal and/or factual error in its analysis of the *Armanto* reference as applied to claim 2 of the present application. As argued in the Request for Reconsideration dated April 11, 2006 (pp. 2-3), *Armanto* does not teach “receiving a message [that] includes a ringing tone and at least one graphical picture” as claimed.
- The Office made a clear legal and/or factual error in its analysis of the *Armanto* reference as applied to claim 5 of the present application. As argued in the Request for Reconsideration dated April 11, 2006 (p. 3), *Armanto* does not teach “receiving a message [that] includes bookmark information defining the location of a server document” as claimed.
- The Office made a clear legal and/or factual error in its analysis of the *Armanto* reference as applied to claim 6 of the present application. As argued in the Request for Reconsideration dated April 11, 2006 (p. 3), *Armanto* does not teach “providing promotional content” as claimed.
- The Office made a clear legal and/or factual error in its analysis of the *Armanto* reference as applied to claim 11 of the present application. As argued in the Request for Reconsideration dated April 11, 2006 (p. 3), *Armanto* does not teach “wherein the message furthermore includes a name label for the profile” as claimed.

While Applicants believe the above points represent the clearest errors made by the Office, Applicants reserve the right to appeal on other bases and errors. In addition, Applicants believe the rejections of other claims not identified above are also based on one or more Office errors. Applicants will address such issues on appeal should the appeal of this case proceed after the Office’s consideration of this paper.

### **CONCLUSION**

All issues having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. However, if for any reason the review panel believes the application is not in condition for allowance or there are any questions, the review panel is invited to contact the undersigned at (202) 824-3153.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated this 12<sup>th</sup> day of June, 2006

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